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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. _____
FM Broadcast Stations) RM - _____
(Topeka and Shawnee, Kansas))

To: Assistant Chief, Audio Division
Media Bureau

PETITION FOR RULE MAKING

Cumulus Licensing Corporation ("Cumulus"), licensee of Station KMAJ-FM, by its counsel, hereby requests that the Commission amend the FM Table of Allotments to delete Channel 299C1 at Topeka, Kansas and allot Channel 299C1 at Shawnee, Kansas for use by KMAJ-FM. No other changes are requested. If this petition is granted, Cumulus will file an application for a construction permit on Channel 299C1 at Shawnee and construct the facilities if its application is granted. In support hereof, Cumulus states as follows:

1. The following table summarizes the changes requested in this Petition:

City	Channel	
	Existing	Proposed
Shawnee, Kansas	-----	299C1
Topeka, Kansas	299C1	----

2. As demonstrated in the Technical Exhibit (Exhibit E), Channel 299C1 can be allotted to Shawnee, Kansas at coordinates 39-09-06 North Latitude, 95-09-28 West Longitude

consistent with Section 73.207 of the Commission's Rules.¹ See Exhibit E, Figure 1. From the allotment coordinates, a 70 dBu signal is provided over all of Shawnee. See Figure 2. The relocation of KMAJ-FM to Shawnee will result in a net gain of 1,355,968 persons within the 60 dBu contour of the station. See Figure 3. No white or gray area will be created in the loss area. See Figure 4.

3. Cumulus desires to change the community of license for Station KMAJ-FM from Topeka to Shawnee under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 3870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Community of License"). There, the Commission stated that a station may change its community of license without subjecting the licensee to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, the proposed use of Channel 299C1 at Shawnee is mutually exclusive with the current use of Channel 299C1 at Topeka. See Exhibit E, Figure 1. Second, Topeka will not be deprived of its only local service because it is currently served by 9 other stations.² Third, the provision of a first local service at Shawnee (2000 population 47,996) under Priority 3 will result in a preferential arrangement of allotments over the retention of numerous local services at Topeka (2000 population 122,377)

¹ Cumulus filed an application to relocate Station KMAJ-FM, FCC File No. BPH-20000316ACF, as amended April 11, 2000. If that application is granted, Cumulus will construct the facilities. Grant of the application will not affect the prosecution and grant of this petition for rule making.

² FM Stations KBUZ, KDVV, KJTY, KTPK, KWIC, and WIBW-FM and AM Stations KMAJ, KTOP, and WIBW are licensed to Topeka.

under Priority 4. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

4. Shawnee, Kansas is located within the Kansas City (Missouri) Urbanized Area. However, the relocation of KMAJ-FM from Topeka to Shawnee should not implicate the Commission's policy concerning the migration of stations from underserved rural areas to well-served urban areas because the station's current community of license, Topeka, is the central city of its own Urbanized Area. Thus, the station is merely moving from one urbanized area to another. *See Boulder and Lafayette, Colorado*, 12 FCC Rcd 583 (1989) (relocation from Boulder, the central city of the Boulder Urbanized Area, to a site with coverage of the entire Denver Urbanized Area did not require a *Tuck* showing). *But see Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768 (2001) (relocation from Kankakee, the central city of the Kankakee Urbanized Area, to Park Forest, within the Chicago Urbanized Area, required a *Tuck* showing).

5. Nevertheless, should the Commission require it, there is ample evidence from which to conclude that Shawnee deserves a first local service preference. In making the determination whether to award an urbanized community a first local service preference, the Commission will consider the extent the station will provide service to the entire Urbanized Area, the relative populations and proximity of the suburban and central city, and, most importantly, the independence of the suburban community. *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). In this case, from the proposed transmitter site, KMAJ-FM will place a 70 dBu contour over 37 percent of the Kansas City (Missouri) Urbanized Area. *See* Technical Narrative. Shawnee is located approximately 14 kilometers away from Kansas City. The 2000 Census population of Shawnee (47,996) is 10 percent of the population of Kansas City (441,545). These figures are similar to those of other suburban communities granted a first local preference. *See*,

e.g., *Anniston, Alabama, et al.*, 16 FCC Rcd 3411, *recon. denied*, 2001 FCC Lexis 6055 (2001) and cases cited therein. In any event, the Commission has repeatedly stated that the factors of relative size and proximity are less important than evidence of independence. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). The following analysis of the eight *Tuck* factors demonstrates the independence of Shawnee from Kansas City.

(1) *Extent to which the residents of Shawnee, Kansas, work in the City of Shawnee.* The population of Shawnee was 47,996 in 2000. This represents an increase of 26.3% from the 1990 U.S. Census figure of 37,993 for Shawnee. According to the 1990 U.S. Census Database, the last year for which statistics are available, 3,218 of the 18,149 workers (17.7%) work in their place of residence. See Exhibit 2.

According to Jim Martin of the Shawnee Chamber of Commerce, there are approximately 1,341 businesses in Shawnee. A few of the major employers within the city limits are Defsendaugh Industries, Federal Express Package Systems, Harte Hanks, Thales ATM and Bayer. Defsendaugh Industries is a waste management and recycling company with 1,200 employees. Federal Express Ground Package Systems employs 500 and is currently expanding. Harte Hanks is a data base direct marketing company with 330 employees. Thales ATM is a manufacturer of air traffic control systems with 260 employees. Shawnee is the location of the United States headquarters of Bayer's animal health division, with 255 employees and an expansion set to occur in June 2002. According to Mike Peterman of City of Shawnee Neighborhood Planning Department, the city is the initial planning stages in a revitalization of downtown Shawnee called "America Downtown Program" which will be designed to spur economic growth and attract businesses to Shawnee.

(2) *Local newspapers and other media cover Shawnee's needs and interests.*

Residents are served by a local weekly newspaper, the *Shawnee Journal Herald*. The newspaper is published every Thursday with a circulation of 10,000 and a subscription circulation of 3,000. It began publication in 1923. The newspaper contains local news articles on topics such as local politics, local school sports and local construction projects. According to Kathy Rowe of the *Journal Herald* staff, local businesses advertise in the newspaper. See Exhibit 2.

The City of Shawnee maintains its own website at <www.cityofshawnee.org>. By accessing this website, city residents can become aware of a wide variety of facts and events concerning Shawnee, including information regarding city officials, public services, public meetings, city development, city job opportunities and community events. Sample pages are attached in Exhibit 2.

(3) *Community leaders and residents perceive Shawnee as separate from Kansas City.* The City of Shawnee has its own unique identity and history that are separate from that of Kansas City. Shawnee is an urban, middle class community located in northeastern Kansas and is part of Johnson County. It is the seventh largest city in the state of Kansas with 42 square miles of rolling hills and countryside. Shawnee derives its name from the native Shawnee Indians who initially settled the area of present-day Shawnee. For its abundance of timber and free-flowing springs, the Indians called their settlement Gum Springs. The first white settlers arrived in the 1830s. Through a series of treaties in which land was repossessed, the Kansas Territory was created by the Federal government in 1854. The land was sold by the government to incoming pioneers who established homes and farms. Shawneetown, later shortened to Shawnee, was

founded and incorporated on August 10, 1856. Shawnee became the first county seat of Johnson County. Shawnee evolved into a small farm market center until the 1950s, when population shifts from large urban areas to smaller surrounding towns occurred. Since 1970, the population of Shawnee has tripled. *See Exhibit 2.*

(4) *Shawnee has its own local government and elected officials.* Shawnee's city government functions independently of any other governmental units. In 1974, Shawnee adopted a city manager form of government. The city government structure is composed of an elected mayor and eight council members, two from each ward, who serve four-year terms. The city manager is selected by the city council. The government has numerous departments including city clerk, public works, finance, engineering, police, fire, park and recreation and planning. It has a municipal court division, licensing division, human resources, animal warden, fire chief, police chief, public safety director, economic development director, senior citizens' coordinator, building inspectors and electrical and plumbing inspectors. Among the services provided by the city are recycling, street repairs, snow removal, and licensing. According to the City of Shawnee Personnel Office, there are approximately 250 full-time City employees. The City of Shawnee had a total budget of \$25,956,341 for fiscal year 2002. *See Exhibit 2.*

(5) *The City of Shawnee has its own zip codes and separate governmental listings in the local telephone company.* The zip codes designated exclusively for the City of Shawnee are 66203, 66214, 66216, 66217, 66218, 66219, 66220, 66226 and 66286. *See Exhibit 2.* The U.S. Postal Service operates the Shawnee Branch at 6201 Nieman Road and the Monticello Branch at 22015 W. 66th Street. *See Exhibit 2.* According to Ms. Judith Janz of the City Clerk Department, residential and business lists

for the City of Shawnee are found in the Southwestern Bell Kansas City Telephone Book, which contains a separate section for Shawnee city government telephone listings.

(6) *The City of Shawnee has its own commercial establishments and health facilities.* As previously noted, there are approximately 1,341 businesses in Shawnee. A substantial number of these businesses identify with the community by using "Shawnee" in their names, for example: Shawnee Goodyear, Shawnee Mission Ford, Inc., and Tuckaway at Shawnee. Other Shawnee retail businesses include a wide variety of companies such as Dillon Pharmacy, Ky-Vee Food Stores, Player's Sports Bar & Grill, Blockbuster Video, Besco Computers, Amoco Food Shop, Hampton Inn, Walls of Clay Pottery Studio, Kaycee Cab Co., Advance Auto Parts, Taylormade Travel, and Boresow's Lawn Enforcement. Banking services are provided by the Bank of Blue Valley, Brotherhood Bank & Trust, and Intrust Bank.

A number of health care providers are located in the City of Shawnee. *See Exhibit 2.* Medical services are available for community residents from many local doctors, some of whom practice with the following groups: Shawnee Family Practice, Shawnee Heartland, Associated Podiatrists and Aesthetic Plastic Surgery Center. Dental care is provided by Advanced Dental, as well as by various other local dentists, Veterinary services may be obtained from Animal Care Clinic.

Shawnee is also home to a number of religious organizations, such as Good Shepherd Catholic Church, Lucas Unified Methodist Church, and Westside Family Church. *See Exhibit 2.* There are many civic organizations in Shawnee, including Shawnee Lions Club, American Legion Post, Shawnee Historical Society, Shawnee Chamber of Commerce and Shawnee Economic Development Council. *See Exhibit 2.*

Community activities and events that occur in the City of Shawnee include Fourth of July Spectacular, Farmer's Market, Old Shawnee Days, Old Shawnee Town Programs and Great Griller's State Championship, free concerts, Theater in the Park, and numerous races. These events are held at the Civic Centre, which is operated by the city, and Old Shawnee Town which is operated jointly by the city and Shawnee Historical Society. Shawnee is also home to three museums: All-Electric Model Museum, Johnston County Museum of History and Wonderscope Children's Museum. *See Exhibit 2.*

(7) *Shawnee is a separate and distinct advertising market from Kansas City.* According to the Ms. Rowe of the *Shawnee Journal Herald*, businesses in Shawnee advertise in *Shawnee Journal Herald* which enables them to reach the residents of Shawnee and does not involve directly Kansas City media sources. According to Ms. Rowe, Shawnee businesses advertise predominantly with the newspaper. Residents may also access the City's website to learn about community events and news. Thus, the residents of Shawnee do not travel to Kansas City or seek out other media sources in order to find what is happening in their community. *See Exhibit 2.*

(8) *The City of Shawnee has its own library and its police and fire protection are provided independent of any other jurisdiction.* The Johnson County Library system operates the Shawnee Library that serves the local population. According to Kathy Boutros of the library staff, the Shawnee Library, with 75,000 titles, is open six days a week. It has computer and Internet access, meeting rooms, a video and book-on-tape collection. The library has several programs for children that are held several times during a week. Library cards can be obtained with a picture identification.

The City of Shawnee is served by two public school districts, Shawnee Mission School District and DeSoto School District and several private schools. There are nine public elementary schools, two public middle schools, and two public high schools located in Shawnee. *See Exhibit 2.*

Shawnee maintains its own police and fire departments. The fire department is headed by a fire chief and staffed by volunteer and career fire and emergency medical service personnel. Shawnee has three fire stations located throughout the city. The department provides fire, search and rescue, HAZ-MAT and extrication. The police department is composed of three divisions with ninety-eight full-time employees and a police chief.


Shawnee has a full range of parks and recreation services. Many sports programs are offered through the Parks & Recreation Department, such as tennis, soccer, softball, baseball and basketball. The City maintains Old Shawnee Town, which contains a combination of original historic structures and replicas of buildings from the late 1800s and early 1900s. Several parks located throughout the city have playgrounds, bike, exercise and hiking trails, picnic areas, baseball/softball and soccer fields, basketball and tennis courts and volleyball. In addition, the city operates two swimming pools. The Mid-America Sports Complex, KC Ice Sports Arena and 3 and 2 Baseball Complex are located in Shawnee. *See Exhibit 2.*

6. Grant of this petition is in the public interest because Shawnee, Kansas will receive its first local service and more than one million additional people will be able to receive radio service. Cumulus reiterates that if the Commission allocates Channel 299C1 to Shawnee, it

will file an application and construct the facility. The Commission should promptly issue a Notice of Proposed Rule Making as described herein.

Respectfully submitted,

CUMULUS LICENSING CORPORATION

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Its Counsel

July 16, 2002

Engineering Statement
In Support for a
Petition for Rule Making
KMAJ(FM), channel 299C1
Shawnee, Kansas
Cumulus Licensing Corp.

General

Cumulus Licensing Corp. ("Cumulus") hereby files a petition for rule making ("PRM") to change the community of license of radio station KMAJ from Topeka, Kansas to Shawnee, Kansas as that community's first local service. This PRM would also change the reference coordinates of KMAJ.

Cumulus requests the following changes to the Table of Allotments:

<u>City</u>	<u>Current</u>	<u>Proposed</u>
Topeka, KS	233C0, 257C3, 262C, 295C, 299C1	233C0, 257C3, 262C, 295C
Shawnee, KS	-----	299C1

Exhibits Explained

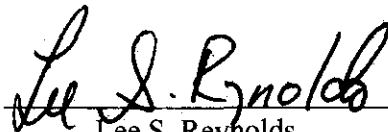
Exhibit E, Figure 1 is an allocation study showing that the proposed coordinates for channel 299C1 at Shawnee (39-09-06/95-09-28) are fully spaced to all other stations in the immediate area. Exhibit E, Figure 2 is a map demonstrating compliance with §73.315(e) of the Commission's Rules, as the proposed facility places a hypothetical class C1 70 dBu contour over 100% of Shawnee.

Exhibit E, Figure 3 is a gain/loss study, showing the area that will receive a new service as a result of this move as well as the area that KMAJ will no longer serve.

Exhibit E, Figure 4 is a remaining services study. This study demonstrates that there will be no white or gray area created by the proposed move.

Conclusion

The proposed deletion of channel 299C1 at Topeka, Kansas and its subsequent allocation at Shawnee, Kansas is in keeping with the Commission's engineering standards set forth in its Rules and Regulations governing Petitions for Rule Making.



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Engineering Exhibit

In Support of a

Petition for a Rule Making

KMAJ, Channel 299C1, Shawnee, Kansas

KMAJ Class C1 Allocation Study

REFERENCE		DISPLAY DATES
39 09 06 N	CLASS = C1	DATA 07-06-02
95 09 28 W	Current Spacings	SEARCH 07-08-02
----- Channel 299 - 107.7 MHz -----		

Call	Channel	Location		Dist	Azi	FCC	Margin
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Community of	Shawnee	KS	39.79	107.8			
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Reference Coordinates:

North Latitude: 39-02-30

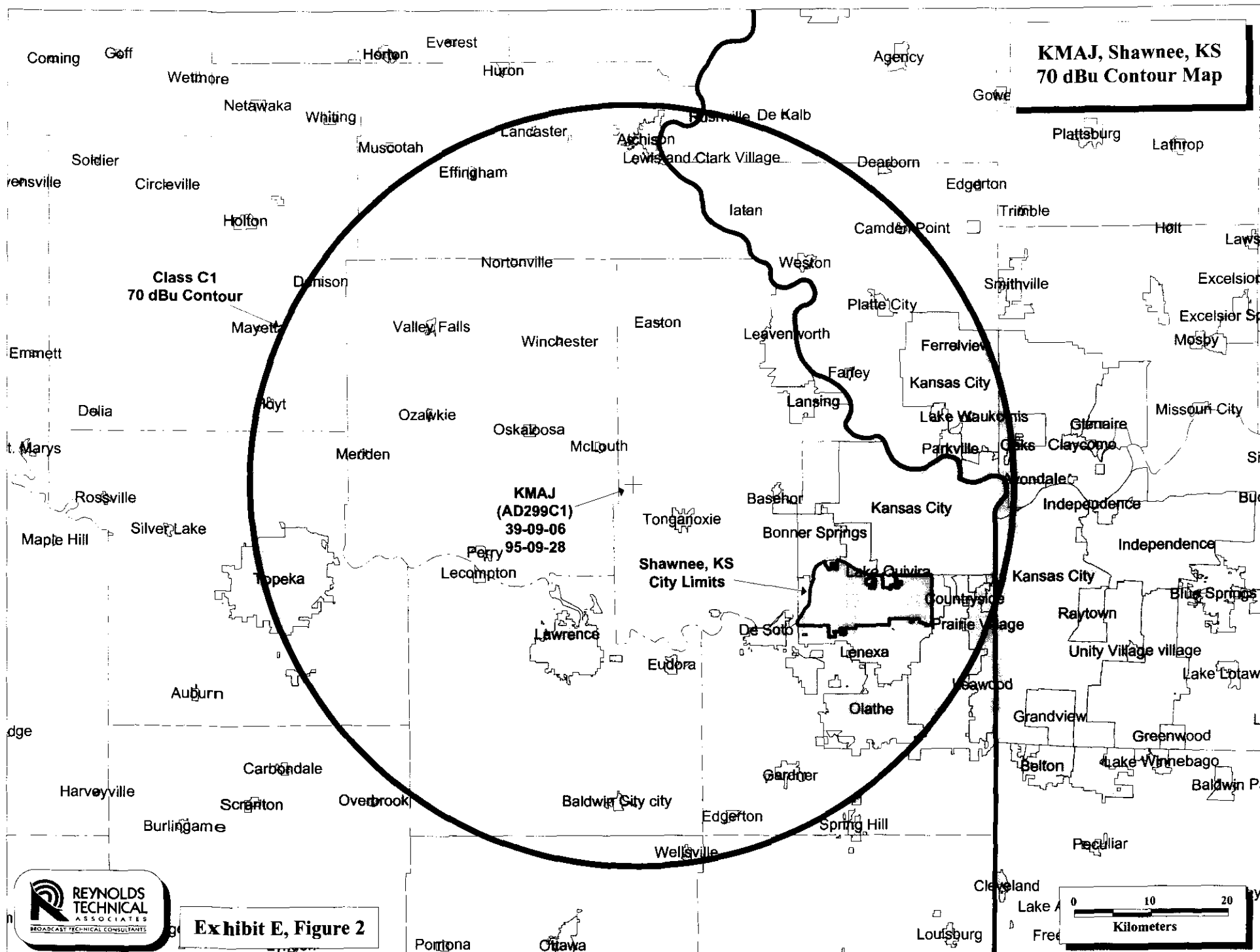
West Longitude: 94-43-12

KMAJFM APP 299C1	Topeka	KS	0.00	0.0	245.0	-245.00
ALLO VAC 299C1	Topeka	KS	4.84	265.2	245.0	-240.16
KMAJFM LIC 299C	Topeka	KS	67.08	258.2	270.0	-202.92
KMAJFM CP 299C	Topeka	KS	68.87	251.6	270.0	-201.13
ALLO VAC 299C1	Topeka	KS	67.08	258.2	245.0	-177.92

Of no concern:

Coordinates for instant facility

KRLK	LIC 299A	Stockton	MO	201.52	146.7	200.0	1.52
KRLK.C	CP 299C3	Stockton	MO	212.59	147.9	211.0	1.59
KMJK	LIC 297C	Lexington	MO	106.95	96.5	105.0	1.95
KCVK	LIC 299A	Otterville	MO	202.81	105.1	200.0	2.81
ALLO	VAC 299A	Pacific Junction	IA	218.11	346.2	200.0	18.11
KLTE	LIC 300C1	Kirksville	MO	207.82	63.8	177.0	30.82



Gain Area = 8,423 sq km
Loss Area = 10,870 sq km
Pop. Gain = 1,496,163
Pop. Loss = 140,195

KMAJ, Shawnee, KS
Gain/Loss Study

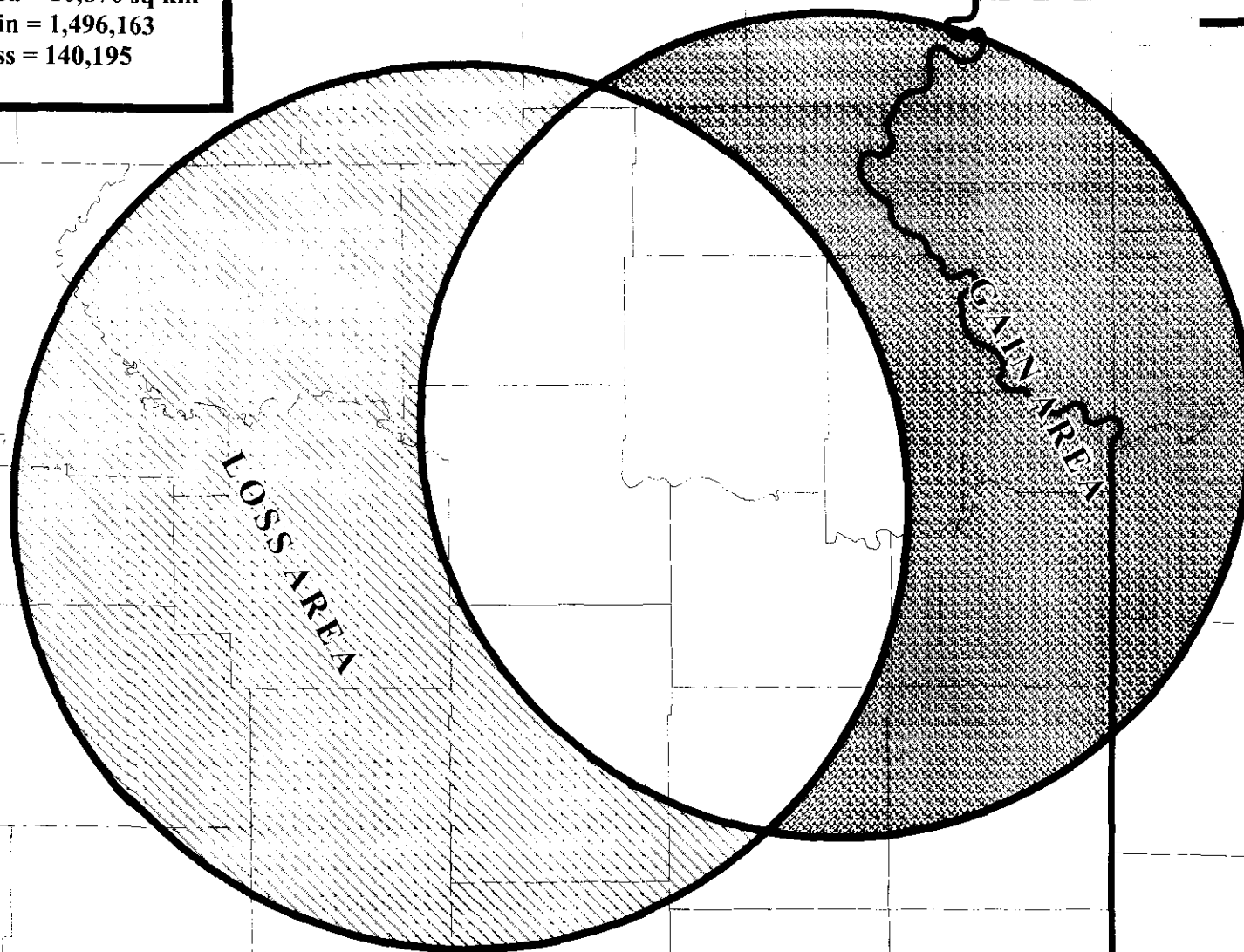
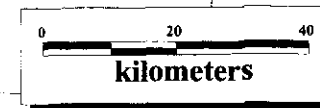


Exhibit E, Figure 3



**KMAJ, Shawnee, KS
Remaining Services Study**

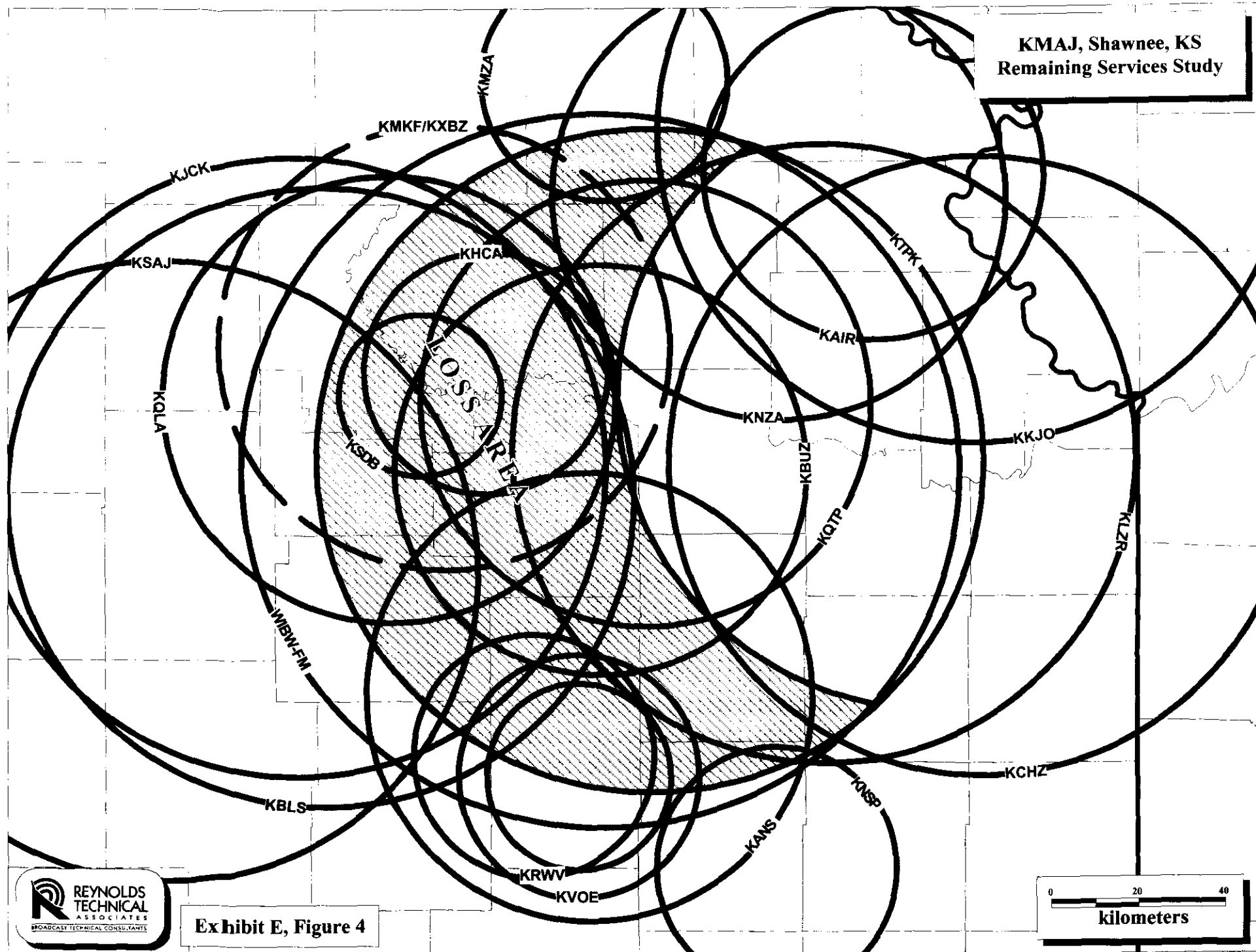


Exhibit E, Figure 4

